

MEMORANDUM OF LAW

DATE: August 12, 1986

TO: Councilman Bill Cleator

FROM: City Attorney

SUBJECT: Special Class Safety Members, Retired (Letter
from Frank Peters)

City Attorney John Witt referred your July 31, 1986 memorandum to me for review and response. I have reviewed your inquiry, Frank Peters' letter, Bob Logan's response to you about the matter, and the applicable Municipal Code sections. It is my opinion that Mr. Logan's response is factually and legally correct.

The Annual Supplemental Benefit 13th check was originally authorized in 1980 for specifically designated classes of retirees. Mr. Peters' and the other 59 retirees he alludes to were not eligible for the benefit. The benefit, incidentally, was voted upon by the system membership and thereafter instituted by ordinance. The money identified for distribution that first year was fully disbursed.

The following year, apparently in response by the Retirement Board to requests to broaden the eligibility for the benefit, special class safety retirees who were receiving fixed retirement benefits were included within the 13th check benefit program. I don't recall, however, that the Board concluded Mr. Peters and group were "unjustly" excluded. That additional class eligibility was also voted upon by the system membership and incorporated into the Municipal Code by Ordinance No. O-15593, dated October 5, 1981. The new eligible class thereafter received the 13th check benefit for 1981 and subsequent years. It should be pointed out that the vote upon the matter and the Ordinance adopted thereafter did not make the eligibility and benefit retroactive. Unless specifically provided, any retroactive payment for the year 1980, a year during which that class was not eligible, would have been an unlawful gift of public funds. Furthermore, the fund of money from which the 1980 distribution was made had been fully expended in 1980. It is

appropriate to once again point out that Mr. Peters has received all the 13th checks he was legally eligible for and entitled to, including the larger distribution effected as a result of the settlement in the 13th check case.

In respect to Mr. Peters second issue, i.e., certain city

employees getting health insurance paid by the Retirement System, this was also incorporated as part of the "meet and confer" process ¶Ordinance No. O-16449, dated June 24, 1985σ and the settlement in the Andrews ¶13th checkσ case ¶Ordinance No. O-16679, dated June 30, 1986σ. Those provisions were voted on by the members of the retirement system and have been incorporated in Municipal Code section 24.0907.2. The eligibility for such coverage is clearly set forth therein, covering ¶as a cumulative result of "meet and confer" and the 13th check case settlementσ all employees who were on the active payroll of the City on October 5, 1980 and retired thereafter. That is the law of the Retirement System which the Retirement officer and the Board are bound to follow.

In summary, the law of the matter ¶retirement ordinancesσ is very clear. You observe there is no question as to entitlement. I believe it is more correctly stated that there is no question as to non-entitlement on several grounds. First, Mr. Peters and his group were not legally entitled to such benefit for the year in question. Second, all funds for the benefit for that year were paid out as called for in the ordinances. Third, the law does not provide for nor imply retroactivity and, absent such provision, any payment for past ineligible years would be viewed as a gift of public funds. Fourth, there may very well be a limitation of actions problem in that Mr. Peters has waited six years to make known his concern, recognizing that he has received annual benefits for the years 1981 through 1985, plus the extra significant additional benefit as a result of the 13th check case settlement, all for years he was legally eligible.

I trust the above analysis and discussion resolves the issue. If you have any further questions, please feel free to ask us.

JOHN W. WITT, City Attorney

By

Jack Katz, Chief Deputy

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